By the direction of the President, the above petitions, as well as the two petitions reported at the last meeting, were read by the Secretary to the Council.

THE MARUMAKKATHAYAM BILL.

Mr. Ananda Row.—Sir, I beg to move that the consideration of the report of he Select Committee on the Marumakkathayam Bill, which was postponed to this day, be now taken up.

Seconded by Mr. Vieyra.

Carried.

Mr. Ananda Row.—In view of the facts that only one Samantha had signed the original petition praying for legislation on the lines followed by the Bill, and that several petitions have since been received from the Vadakumkoor, Thekkumkoor and Alangad Rajas, who form the bulk of the Samantha community in Travancore, asking for their exclusion from the scope of the Bill, I think that the proposed law may be confined to the Nairs.

President.—There are only a few Samantha families in this country and most of them do not apparently at present want this legislation. It is as well not to force upon the Samantha community a piece of social legislation which they do not unanimously ask for.

Mr. Ananda Row.—I propose that the words "the Nairs" be substituted for the words "certain classes of Marumakkathayees, *viz.*, Nairs and Samanthas", in the heading and for the words "certain classes of Hindu Marumakkathayees *viz.*, Nairs and Samanthas" in the preamble, and, as a consequence, that the words "and Samanthas" occurring in lines 1 and 2 and 1 in lines 4 and 5 of para 2 of Section 1, may be omitted. For the same reason, the definition of "Samantha" in Section 2, and Section 31 which provides for the application of the other provisions of the law to Samanthas, may also be omitted.

Seconded by Mr. Vieyra.

Carried.

PART I.—PRELIMINARY.

Section 1, Para 1.

Mr Ananda Row.—In view of the amendments now passed, I propose that the word "Nair" be substituted for the word "Marumakkathayam" in the short title of the Bill.

Seconded by Mr. Raman Pillai.

Carried.

Section 2.

Mr Kesava Pillai.—The definitions of "Thavahzee of a female", "Thavazhee of a male" and "Collateral Thavazhees," given in the Bill, make the meaning of the word "Thavazhee" obscure by giving it a signification different from its ordinary acceptation. The word has a well-understood meaning in ordinary parlance, *viz.*, "the mother's line". For the sake of clearness and brevity, I propose that the following single definition of "Thavazhee" be substituted for the three definitions referred to, *viz.*, "Thavazhee means a group of persons descended in female line from the mother of the senior among them."

Mr Ananda Row.—Whatever may be the root meaning of the word thavazh it *is* usual to draw a distinction between the thavazhee of a male and that of a female. The former means the line of *his mother* and the latter *her* own line and not that

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her mother. It is for this reason that the Select Committee have retained the three separate definitions.

The motion, not having been seconded, fell through.

Mr Kesava Pillai.– As conjugal unions among the Nairs are sometimes effected by the thalikettu ceremony, it would be as well to define "Marriage" in such a way as not to exclude such kind of marriages. I therefore propose that the word "includes" be substituted for the word "means" in the definition of "Marriage."

Mr. Krishnan Nair.—The proposed amendment will, if adopted, make the definition of "Marriage" too wide, and it will also include all sorts of marriages without the presentation of cloth and without the thalikettu ceremony. I think that *some* ceremony should be declared essential to constitute a valid marriage, and the presentation of cloth seems to be the general form.

Mr. Kesava Pillai's proposal not being seconded, fell through.

Mr. Ananda Row.—Sir, as "Marriage," is a well-understood term and as the succeeding Sections 3 and 4 define, for the purposes of this law, the sort of rite required to be performed to constitute a valid conjugal union, I propose that the definition of "Marriage" be omitted.

After some discussion, Mr. Ananda Row's motion was put and agreed to.

PART II.—Marriage and its Dissolution.

Sections 3 and 4.

Mr. Ananda Row.—In a piece of legislation of this sort, it is necessary to recognise and legalise the prevailing custom, but it is inexpedient to recognise for legal purposes different kinds of custom or ceremony in regard to a single obligation. In view of the amendment to omit the definition of "Marriage" already passed, and also in view of the generally accepted ceremony of the presentation of cloth by the bridegroom to the bride, I propose that the following be substituted for the present Sections 3 and 4, and that the succeeding Sections be re-numbered :—

"3. The conjugal union of a Nair female, subject to the restrictions of consanguinity and affinity, with—

(i) a Nair male, or

(ii) any male, other than a Nair, with whom conjugal union is permitted according to recognised social custom and usage,

openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which this Regulation comes into force and subsisting on such date, or so solemnised after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes."

Seconded by Mr. Krishnan Nair.

Mr. Madhavan Tampi.—In supporting this motion, I would propose that the expression "with whom conjugal union is permitted according to recognised social custom and usage" be also put as a separate paragraph along with the words "openly solemnised, &c.," so that the restriction therein contained may apply to both the Clauses (i) and (ii).

Mr. Kesava Pillai.—I do not think it desirable that the restriction should attach to Clause (i) also.

The sense of the meeting being against Mr. Madhavan Tampi's suggestion, Mr. Ananda Row's proposal was, after some discussion, put and agreed to.

Mr. Ananda Row.—As a consequence of the previous amendment, the proviso to this Section also requires modification, and I propose that it be recast as follows :—"Provided that, in conjugal unions so solemnised after the date on which this Regulation comes into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union

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shall not be deemed to be a valid marriage, unless it takes place with the consent of his or her legal guardian".

Mr. Kesava Pillai.—Sir, in seconding the motion, I propose to change the expression "legal guardian", which may mean the Karanavan or the father as the case may be, into the word "Karanavan". Otherwise, difficulties may be experienced in cases where the father and the Karanavan disagree as to the choice of the bride or bridegroom. To obviate these evils it is that I propose that the Karanavan may invariably be the legal guardian for this purpose.

Mr. Easwara Pillai.—In supporting Mr. Ananda Row's motion, I think that the expression "legal guardian" may be left alone.

Mr. Madhavan Tampi.—I am not for changing the words "legal guardian"

Mr. Raman Pillai.—I also think so.

The sense of the meeting being against Mr. Kesava Pillai's suggestion, Mr Ananda Row's motion was put and agreed to.

Section 9.

Mr. Ananda Row.—Objection has been taken to the wording of the marginal note. I therefore propose that the following be substituted for the present marginal note to this Section :—"Subsequent marriage of a female during the continuance of a prior marriage, void."

Seconded by Mr. Kesava Pillai.

Carried

PART III.—Maintenance and Guardianship.

Section 10.

Mr. Ananda Row.—In regard to Clause (b) of this Section, there appears to be some difference of opinion, and I beg to move for the postponement to tomorrow of the consideration of this Clause, so that we may have time to look up the legal authorities on the point.

Seconded by Mr. Kesava Pillai.

Resolved accordingly.

PART IV.—Intestate Succession.

Sections 12—16.

Mr. Kesava Pillai.—Sir, in regard to intestate succession to the self-acquisition of a Nair male, I think that the right to a half share should be given to the *divided* Marumakkathayam heirs as well as to the *undivided* heirs, and that the whole of such self-acquisition should go to the wife and children, only in the absence of *either* class of Marumakkathayam heirs. This right the divided heirs have at present and they should not be deprived of it in violation of the fundamental principles of the Marumakkathayam system, as contemplated in these provisions. Further, I think that the devolution of property on a thavazhee as such gives rise to the notion of equal rights among the members of such thavazhee, in the popular mind, and this is fraught with evil consequences. To obviate this, it would be well to state clearly that the property shall devolve on the senior male member, or, in the absence of males, on the senior female member of the gr-

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concerned. I therefore propose that Part IV of the Bill be recast in accordance with the amendments already suggested by me and published in the Gazette along with the report of the Select Committee.

Mr. Easwara Pillai.—I am of opinion that the right of succession should be given only to the undivided heirs, and that the Sections of the Bill should stand as they are.

Mr. Madhavan Tampi.—I agree with Mr. Easwara Pillai and think that the existing Sections may be left alone.

Mr. Raman Pillai.—I do not think that the provisions of the Bill require modification.

Mr. Ananda Row.—Sir, Mr. Kesava Pillai's suggestion, as I understand it, is virtually a re-statement of the old rules of the Marumakkathayam law in regard to intestate succession. Strictly speaking, division and the historical Marumakkathayam system cannot coexist. When once a division is effected among the members of a tarwad, they have got out of that system. Under the Hindu law, the divided brothers do not get anything under similar circumstances, and in fact the deceased's daughter who is married to another family and is a stranger, takes in preference to such brothers. Hence I do not see why a divided member who is virtually a stranger, should be given the right in preference to the deceased's wife and children for whose sake this piece of legislation is primarily intended. Further, the Courts have, by a series of decisions, altered the historical Marumakkathayam law, and it is more or less the judge-made Marumakkathayam law that we have at present. Why not we then give such law legislative sanction and authority?

Mr. Kesava Pillai's motion was not seconded and consequently, it fell through.

Mr. Ananda Row.—I propose that the following marginal note be inserted Section 16:—"Possession of property inherited under Sections 14 and 15."

Seconded by Mr. Raman Pillai.

Carried.

PART VI.—Duties and Powers of Karanavans and Anandaravars.

Section 18.

Mr. Krishnan Nair.—To make the meaning clear, I propose that the words lease it for a period of more than 12 years" be inserted between the words property, or" and the words "or mortgage it" in lines 6 and 7.

Seconded by Mr. Vieyra.

Carried.

Sections 19—24.

esava Pillai.—For the above Sections, I propose that the Sections o 20 in my Memorandum of amendments, defining the rights, duties and ranavans and Seshakars, be substituted. The provisions I have put in andum and in my Bill have the advantage of clearly stating the rights, ponsibilities of the members of a Marumakkathayam tarwad, as I

rishnan Nair.—We do not attempt the codification of the Marumakka. all that we propose to do by the provisions of this Part is to definitely of the most important rights and liabilities of the Karanavans and the *n view to minimise litigation.* The Sections suggested by Mr. Kesava too elaborate, and they go into minute details which it may not be desirdient for the legislature to do just now.

Kesava Pillai's motion was not seconded and, so, it fell through.

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Mr. Madhavan Tampi.—In this connection, I have to state that we shall be conferring a great boon on the Anandaravars by giving them the right to redeem mortgages of tarwad properties. I propose that the old Section 20 be restored.

Seconded by Mr. Easwara Pillai.

Mr. Krishnan Nair.—I do not think it advisable to restore the old Section, as the provision therein contained is likely to lead to difficulties in practice.

Mr. Ananda Row.—I agree with Mr. Krishnan Nair.

After a short discussion, Mr. Madhavan Tampi's motion was put to the vote and lost.

Mr. Ananda Row.—I propose that the following marginal note be inserted for Section 22 :—" Delegation of powers by Karanavan, how to be done ".

Seconded by Mr. Vieyra.

Carried.

PART VII.—Partition.

Sections 25—28.

Mr. Kesava Pillai.—Sir, to what I have already said in regard to partition on a former occasion, when this Bill was introduced, I have but a few words to add. In the first place, there *is* a strong volume of public opinion *against* allowing partition. As far as I have correctly understood the situation, the members of the middle class families are *not*, as a rule, in favour of the change. Another reason which I have to adduce against partition is that, whatever view we may hold in regard to the Karanavan's rights over the tarwad property, there can be no doubt that the entire possession thereof is vested in him for life and that, under the present law, he cannot be deprived of such possession except for his own fault. This may have its evils, but it certainly has the great merit of creating in the Karanavan's bosom a feeling of absolute proprietorship, thereby rendering him a good manager of the tarwad and its estates. I think that we should try to retain these advantages, which partition will take away. For these reasons, I am against allowing partition and I propose that Part VII of the Bill may be wholly dropped.

Mr. Madhavan Tampi.—Sir, I am also for this Part being omitted. As the Member from Shertalla said at the last Assembly, the Marumakkathayam system is becoming " Irumakkathayam". Partition of any kind of the tarwad properties will only be attended with injurious consequences. If we take the opinions of the Members of the Assembly as representing those of the people, it will be seen from what they said at the last Assembly, that public opinion was *divided* in regard to the question of partition. Some of the Members who were in favour of partition did not want outright partition but only separate allotment of properties for enjoyment. In the face of such opposition, it will be more or less compulsory legislation, if ment pass the Bill as it is. It is by no means desirable that social legislation should be carried out in the absence of the general app community concerned.

Mr. Easwara Pillai.—So far as I know, I may say that the volu opinion in North Travancore is *against* partition. I am therefore for o VII.

President.—Gentlemen, the position of the Government with r question of partition is this. Partition was one of the points urged in the nally presented at the Assembly and it was therefore referred to Mr. Go Committee for enquiry. From what the Committee found on investigation, t in the Bill, provisions relating to partition. At the informal meetings we seen that all the non-official Members (including Mr. A. Sri Narayanan is now out of the Council) were opposed to partition. When the

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Order sanctioning the introduction of the Bill into this Council was issued, it was recognised that public opinion was divided on the subject. Later on, at the meeting of this Council at which the principle of the Bill was affirmed, all the non-official Members spoke strongly and at great length against partition. The same opinion, I see, has been voiced by them at the Select Committee meetings, and now it is seen that they still adhere to those views. Personally, I am of opinion that *some* provision for partition between branches, only *remotely* related to each other, will be a wholesome change in the Marumakkathayam law, calculated to increase the volume of happiness in such of the tarwads as have become unwieldy. For the greater part of my official life, I have been on the West Coast, among people governed by the Marumakkathayam law, and I have formed the above opinion after long experience and careful thought. Whatever, however, my personal views in the matter may be, I may at once say, on behalf of the Government, that they do not wish to enact a law for partition, ignoring the protests of the non-official Members of this Council, who all belong to the community affected by the law. On the other hand, the Government are bound to recognize, and they do recognize, the force of the opposition, especially in a matter of social legislation like this. But I may assure you that the time will come ere long when the unanimous voice of the Nair community will demand the provision for partition and that this very Council will have to take up again this question of partition. With these remarks, I agree to Part VII relating to partition being omitted.

It was resolved, after some discussion, that Sections 25 to 27 of Part VII relating to the partition of tarwad property be omitted, and that Section 28 relating to the partition of properties given by or inherited from the husband or father by the wife or widow and children, be inserted at the end of Part IV, the Section being numbered as 17, the succeeding Sections being renumbered, and Part VIII being put as Part VII.

Old Section 32.

Mr. Ananda Row.—I think that there is now no necessity for taking power to the Government to grant exemption from the whole or any part of the Regulation, as provided in this Section. I therefore propose that the Section be omitted.

Seconded by Mr. Krishnan Nair.

Carried.

The Council adjourned at 5-30 P. M.

ncil met again in the Dewan's room, Public Offices, on Tuesday, 1912/24th Makaram 1087, at 3 P. M.

PRESENT.

ı Bahadur P. Rajagopalachari, Esquire,
C. I. E. Dewan .....*Presiding.*

A. J. Vieyra, Esq., B. A.
S. Padmanabha Iyer, Esq., M. A.
R. Ananda Row, Esq., B. A. & B. L.
N. Raman Pillai, Esq., B. A.
M. Krishnan Nair, Esq., B. A. & B. L.
E. Poonen, Esq., B. A., M. D., C. M., F. R. I. P. H.
P. Kesava Pillai, Esq., B. A. & B. L.
M. Madhavan Tampi, Esq.
R. Easwara Pillai, Esq., B. A.

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arayanan Pandalay, Esq., B. A. & B. L. .....*Secretary.*

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Section 10.

Mr. Ananda Row.—To resume the consideration of Clause (b) of this Section, I think that the obligation to give maintenance can only be a *personal* matter, while the retention of this Clause will make it a right against property. I am not aware of any judicial decisions in this country in support of the provision contained in the Clause, making maintenance a charge on the self-acquired property of a deceased non-Nair. In matters of this kind, it is, in my opinion, inexpedient to make a law which will conflict with the personal law of another community, in the absence of a well-established custom or Court decisions. By the omission of this Clause, whatever rights the Nair wife or widow and minor children have at present as against a non-Nair husband and father, are not of course taken away. The proposed law gives the Nair females a great many more rights than they now have, and I think that in course of time their position will further improve. For these reasons, I propose that this Clause with its proviso may be omitted.

Seconded by Mr. Vieyra.

Mr. Madhavan Tampi.—I think that the right provided by this Clause is supported by judicial decisions.

Mr. Kesava Pillai.—Sir, there is the authority of a Privy Council ruling in regard to the right to maintenance of illegitimate children, under the Hindu Law. But when the Clause is wholly omitted, the self-acquired property of the non-Nair Marumakkathayee husbands and fathers will be exempted from the obligation. As regards the non-Nair Makkathayees, I am not very particular to retain the Clause.

Mr. Easwara Pillai.—I think that the Clause may be retained.

President.—In regard to this question, I think that, while all the rights the Nair women and children have under the present law and custom should of course continue intact, it is equally necessary that we should interfere as little as possible with the personal law of another community. So far as I can see, I think that, in order that a system of law like this may be workable, it is essential that it does not militate against the interests of other classes, whose co-operation cannot be ignored as unnecessary. I think that it will be well to drop this Clause.

After some discussion, Mr. Ananda Row's motion for the omission of Clause (b) with its proviso was put and agreed to.

Mr. Ananda Row.—I beg to move that the Bill, as now amended by Council, may be read again on a future day of which due notice shall be given.

Seconded by Mr. Raman Pillai.

Carried.

The Council adjourned at 4-20 P. M.

P. RAJAGOPALA

President

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